IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CENTRAL EXCISE APPLICATION NO.45 OF 2001

The Commissioner of C.Excise .. Applicant

vs

M/s Whirpool India Ltd .. Respondent

Ms.S.V.Bharucha i/b Mr.H.P.Chaturvedi for Applicant
Mr.Prakash Shah i.b PDS Legal for Respondent

CORAM : S.RADHAKRISHNAN & V.C.DAGA, JJ

DATE : 7th June, 2007

P.C.

1. Heard learned counsel for the appellant and the respondents.

2. Perused the order of the Commissioner, Central Excise dated 30th June, 2000 wherein the Commissioner had imposed a penalty of Rs.32,39,170/- against Mutual Industries under section 11A (2) of the Central Excise Act, 1944 and it may be noted here that M/s Mutual Industries was the manufacturer of goods who was obliged to pay duty. The said order of the Commissioner also imposed a penalty of Rs.20,00,000/- on the petitioner who was the purchaser under Rule 209A of the Central Excise Rules, 1944. The aforesaid imposition of penalty on both the manufacturer M/s

Mutual Industries as well as the purchaser-petitioner herein were set aside by CESTAT by its order dated 29th November, 2000 with common reasons.

3. Learned counsel for the respondents could not dispute that so far as the case of the purchaser and manufacturer M/s Mutual Industries is concerned, the department has not filed any application or challenged the same whereas with regard to the petitioner-purchaser the present application is being filed. There is no dispute that the Department has accepted the order of CESTAT with regard to the Manufacturer.

4. If that be so, the department is precluded from challenging with regard to the Purchaser, who is the Petitioner herein. Under the aforesaid facts and circumstances, we do not find any substantial question of law. Application stands rejected.

(V.C.Daga, J) (Dr.S.Radhakrishnan, J)